



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0020; Notice 2]

Hankook Tire America Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Hankook Tire America Corporation (Hankook) has determined that certain Hankook Dynapro MT2 tires, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Hankook filed a noncompliance report dated February 19, 2020, and subsequently petitioned NHTSA on March 11, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Hankook's petition.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (325) 655-0547, jayton.lindley@dot.gov

SUPPLEMENTARY INFORMATION:

I. Overview:

Hankook has determined that certain Hankook Dynapro MT2 tires, do not fully comply with paragraph S5.5(f) of FMVSS No. 139, *New pneumatic radial tires for light vehicles* (49 CFR 571.139).

Hankook filed a noncompliance report dated February 19, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on March 11, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to

motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556,

Exemption for Inconsequential Defect or Noncompliance.

Notice of receipt of Hankook's petition was published with a 30-day public comment period, on August 28, 2020, in the **Federal Register** (85 FR 53436). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2020-0020."

II. Tires Involved:

Approximately 175 Hankook Dynapro MT2 tires, size LT215/85R16, manufactured between October 20, 2019, and November 30, 2019, are potentially involved.

III. Noncompliance:

Hankook explains that the noncompliance is that the subject tires were marked with the incorrect number of nylon plies in the tread; and, therefore, do not meet the requirements of paragraph S5.5(f) of FMVSS No. 139. Specifically, the tires were marked "TREAD 2 STEEL + 2 POLYESTER + 1 NYLON; SIDEWALL 2 POLYESTER", when they should have been marked "TREAD 2 STEEL + 2 POLYESTER + 2 NYLON; SIDEWALL 2 POLYESTER."

IV. Rule Requirements:

Paragraph S5.5(f) of FMVSS No. 139, includes the requirements relevant to this petition. Each tire must be marked on one sidewall with the actual number of plies in the sidewall and the actual number of plies in the tread area, if different, as specified in paragraph S5.5(f).

V. Summary of Hankook's Petition:

The following views and arguments presented in this section, "V. Summary of Hankook's Petition," are the views and arguments provided by Hankook and do not reflect the views of the Agency. In its petition, Hankook describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Hankook offers the following reasoning:

1. The incorrect ply labeling information does not affect the operational safety of vehicles on which the tires are mounted.
2. The tires meet or exceed the performance requirements of FMVSS No. 139, and they otherwise comply with the labeling and performance requirements of FMVSS No. 139.
3. Hankook is not aware of any warranty claims, field reports, customer complaints, or any incidents, accidents, or injuries related to the subject condition.
4. Hankook cites the Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act (Pub. L. 106-414) and several of NHTSA's past grant notices of petitions for decisions of inconsequential noncompliance concerning the mislabeling of ply information and contend those are similar to the subject petition. Hankook states that NHTSA has routinely concluded the number of plies is inconsequential to vehicle safety. Hankook believes the same reasoning applies to the subject tires and that mislabeling the number of nylon plies does not affect the operational safety of the vehicles. Further, Hankook states, the subject tires correctly label the number of steel plies, alleviating the safety concern for the tire retread, repair, and recycling industries."

Hankook argues that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Hankook's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov> and by following the online search instructions to locate the docket number as listed in the title of this notice.

VI. Public Comment: NHTSA received one comment from the general public regarding Hankook’s petition from Mr. Bruce Grim.¹ Mr. Grim stated that although mislabeling a tire sidewall may seem inconsequential, for some in the industry it is still an important aspect of safety for consumers. He suggested that the public is not sufficiently notified at the point of sale of the potential perils or hazards due to the subject noncompliance. Mr. Grim also states that in the event of a recall, it is important that retailers and consumers can identify the subject tires.

VII. NHTSA’s Analysis:

A. General Principles

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.² In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. “Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.”³ “[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.”⁴

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.⁵ Similarly, NHTSA has

¹ See <https://www.regulations.gov/comment/NHTSA-2020-0020-0003>

² See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

³ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

⁴ *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future”).

⁵ See *Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.⁶

B. NHTSA's Response to Hankook's Petition

NHTSA has evaluated the merits of the inconsequential noncompliance petition submitted by the petitioner and agrees that, based on the facts presented, this specific noncompliance of the subject tires is inconsequential to motor vehicle safety. The Agency considered the following prior to making this determination:

1. **Operational Safety & Performance:** NHTSA agrees that in this case, the incorrect number of nylon plies labeled on the tire has no effect on the operational safety of vehicles when the affected tires meet the other performance and labeling requirements of the applicable FMVSS.
2. **Tire Identification and Traceability:** The tires have the required information per 49 CFR 574.5 to ensure that the tires may be properly registered for the purposes of a safety recall. The entire TIN, including the plant code and manufacturing date is both legible and easily discernible.
3. **Downstream Operations:** The Agency must also consider other stakeholders, in addition to the manufacturer and end-user. Downstream entities involved in tire repair, retreading, and recycling operations require certain information to determine if tires may be safely used in their operations. The existence of steel in a tire's sidewall and tread can be relevant to the manner in which it should be repaired or retreaded. The use of steel cord construction in the sidewall and tread is the primary safety concern of these

⁶ See *Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

industries. The Agency believes the noncompliance of the subject tires will have no measurable effect on the safety of the tire retread, repair, and recycling industries since the tire sidewalls are marked correctly for the number of steel plies.

4. **Consumer Feedback and Focus Groups:** The Agency has concluded, based on previous feedback, that the tire construction information, specifically the number of plies and cord material in the sidewall and tread plies, influences very few consumers when they are deciding to buy a motor vehicle or replacement tires. This conclusion is based on information gathered from the Advance Notice of Proposed Rulemaking (ANPRM) that was published in the Federal Register on December 1, 2000, (65 FR 75222).
5. **Public Comments:** In response to Mr. Grim's comments, the Agency agrees that the safety of the end-users is a priority and has taken that into consideration when analyzing this petition. Furthermore, the Agency agrees that the user's ability to identify a tire in the event of a recall is important and finds nothing in the facts of this petition that would impede tire identification of the subject tires in the event of a recall.

In summary, the Agency believes that the specific incorrect labeling of the tire construction information present in this instance will have an inconsequential effect on motor vehicle safety or any related downstream tire repair, retread, or recycling operations.

VIII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Hankook has met its burden of persuasion that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Hankook's petition is hereby granted and Hankook is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or

noncompliance. Therefore, this decision only applies to the subject tires that Hankook no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Hankook notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022-01133 Filed: 1/20/2022 8:45 am; Publication Date: 1/21/2022]